

Remarks

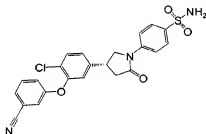
Upon entry of the present amendments, claims 1-4 and 23-41 will be pending. Claims 5-22 have withdrawn as being non-elected subject matter. Applicant explicitly reserve the right to prosecute withdrawn claims in a divisional application under 35 U.S.C. § 121. Claims 1-4 and 32-37 have been rewritten as dependent claims of claim 23. New dependent claims 38-41 relating to pharmaceutical compositions and methods of using compounds of claim 23 have been added. No new matter has been added.

In response to the restriction requirement, Applicant elects Group VI, claims 23-31, drawn to compounds according to the formula of claim 23, with traverse. Applicant respectfully submit that Group I, claims 1-4, drawn to compounds according to the formula of claim 1, and Group VII, claims 32-37, drawn to compounds according to the formula of claim 32, fall within the scope of claim 23 and can be examined together without undue burden. According to the MPEP, where claims can be examined together without undue burden, the Examiner must examine the claims on the merits even though they are directed to independent and distinct inventions. See, MPEP § 803.01. To establish that an “undue burden” would exist, the Examiner must show that examination of the claims would involve substantially different prior art searches, making examination burdensome.

As the Office indicated, Group I, Group VI and Group VII are classified in subclasses of the same classes (*i.e.*, classes 544, 546 and 548). Accordingly, Group I and Group VII can be examined together with Group VI without undue burden. Moreover, claims 1-4 and claims 32-37 have been amended to depend upon claim 23, and thus, would not involve an undue burden.

Furthermore, new claims 38-41 relating to pharmaceutical compositions and methods of the present invention have the patentable aspect of the elected compounds. Therefore, no undue burden exists to examine all the claims together. In addition, once the product claims are found allowable, withdrawn methods claims which are commensurate in scope to the allowed product claims must be rejoined, pursuant to MPEP § 821.04.

In addition, an election of a single species is also required from the elected group.
Applicant elects with traverse compound 325:



The species election is made for search purposes only. Upon allowance of a generic claim, Applicant is entitled to consideration of claims to additional species or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. See, MPEP § 809.02(c).

Information Disclosure Statement

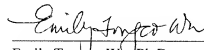
Applicant previously submitted an Information Disclosure Statement on November 19, 2003, for consideration during prosecution of this application, and to be made of record.

Conclusion

In view of the foregoing, Applicant believes that the restriction and species election is fully responsive. If the Examiner believes that a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-812-1539.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 50-1885** referencing docket No. **P1080US20**.

Respectfully submitted,



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